

# **FHWA Limited English Proficiency (Executive Order 13166)**

## **Frequently Asked Questions**

### **WHAT ARE THE TWO MAJOR INITIATIVES OF EXECUTIVE ORDER 13166?**

The first initiative is designed to better enforce and implement an existing obligation (Title VI of the Civil Rights Act of 1964). Title VI of the Civil Rights Act of 1964 prohibits recipients of federal financial assistance from discriminating based on national origin by, among other things, failing to provide meaningful access to individuals who are limited English proficient (LEP). The Executive Order requires federal agencies that provide federal financial assistance to develop guidance to clarify those obligations for recipients of such assistance ("recipient guidance"). Thus, for instance, the Department of Justice (DOJ) is developing guidance specifically for its recipients, which are primarily state and local law enforcement agencies and departments of corrections.

Second, the Executive Order sets forth a new obligation: Because the federal government adheres to the principles of nondiscrimination and inclusion embodied in Title VI, the Executive Order requires all federal agencies to meet the same standards as federal financial assistance recipients in providing meaningful access for LEP individuals to federally conducted programs. Thus, each federal agency must develop a plan for providing that access.

### **IF A RECIPIENT IS COVERED BY A STATE OR LOCAL "ENGLISH-ONLY" LAW, MUST IT STILL COMPLY WITH THE TITLE VI OBLIGATION AND AGENCY GUIDANCE INTERPRETING THAT OBLIGATION?**

Yes. State and local laws may provide additional obligations to serve LEP individuals, but cannot compel recipients of federal financial assistance to violate Title VI. For instance, given our constitutional structure, State or local "English-only" laws do not relieve an entity that receives federal funding from its responsibilities under federal anti-discrimination laws. Entities in States and localities with "English-only" laws are not required to accept federal funding – but if they do, they have to comply with Title VI, including its prohibition against national origin discrimination by recipients of federal assistance. Failing to make federally assisted programs and activities accessible to individuals who are LEP will, in certain circumstances, violate Title VI.

### **WHEN DEVELOPING PLANS AND GUIDANCE REGARDING TRANSLATIONS OF DOCUMENTS, HOW DO WE DETERMINE WHICH DOCUMENTS MUST BE TRANSLATED?**

It is important to ensure that written materials routinely provided in English also are provided in regularly encountered languages other than English. It is particularly important to ensure that vital documents are translated into the non-English language of each regularly encountered LEP group eligible to be served or likely to be affected by the program or activity. A document will be considered vital if it contains information that is critical for obtaining the federal services and/or benefits, or is required by law. Vital documents include, for example: applications, consent and complaint forms, notices of rights and disciplinary action, notices advising LEP persons of the availability of free language assistance, written tests that do not assess English language competency, but rather competency for a particular license, job, or skill for which English competency is not required, and letters or notices that require a response from the beneficiary or client. For instance, if a complaint form is necessary in order

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to file a claim with an agency, that complaint form would be vital. Non-vital information includes documents that are not critical to access such benefits and services.

Vital documents must be translated when a significant number or percentage of the population eligible to be served, or likely to be directly affected by the program/activity, needs services or information in a language other than English to communicate effectively. For many larger documents, translation of vital information contained within the document will suffice and the documents need not be translated in their entirety.

It may sometimes be difficult to draw a distinction between vital and non-vital documents, particularly when considering outreach or other documents designed to raise awareness of rights or services. Though meaningful access to a program requires an awareness of the program's existence, we recognize that it would be impossible, from a practical and cost-based perspective, to translate every piece of outreach material into every language. Title VI does not require this of recipients of federal financial assistance, and EO 13166 does not require it of federal agencies. Nevertheless, because in some circumstances lack of awareness of the existence of a particular program may effectively deny LEP individuals meaningful access, it is important for agencies to continually survey/assess the needs of eligible service populations in order to determine whether certain critical outreach materials should be translated into other languages.

### **WHAT ARE THE STANDARDS FOR ORAL INTERPRETATION?**

The obligation to provide meaningful opportunity to individuals who are LEP is not limited to written translations. Oral communication between recipients and beneficiaries often is a necessary part of the exchange of information. Thus, a recipient that limits its language assistance to the provision of written materials may not be allowing LEP persons "effectively to be informed of or to participate in the program."

There are a number of steps which can assist recipients and federal agencies in providing such oral assistance. They range from hiring bilingual staff or staff interpreters competent in the skill of interpreting, to contracting with qualified outside in-person or telephonic interpreter services, to arranging formally for the services of qualified voluntary community interpreters who are bound by confidentiality agreements. Generally, it is not acceptable for agencies or recipients to rely upon an LEP individual's family members or friends to provide the interpreter services. The agency or recipient should meet its obligations under EO 13166 or Title VI by supplying competent language services free of cost. In rare emergency situations, the agency or recipient may have to rely on an LEP person's family members or other persons whose language skills and competency in interpreting have not been established. Proper agency or recipient planning and implementation is important in order to ensure that those situations rarely occur.

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### **DOES EXECUTIVE ORDER 13166 REQUIRE THAT BIDS BE ADVERTISED IN LANGUAGES OTHER THAN ENGLISH?**

Generally, current practice with regard to announcing government contracts and grants would not be altered under the Executive Order. In determining what is required, the focus of the analysis in this situation is on the first factor – the number or proportion of eligible LEP persons. Except, perhaps, in territories, it is reasonable to expect that the number or proportion of eligible contract or grant recipients who are LEP and are themselves attempting to find and respond to announcements of grants and contracts is negligible.

### **HOW CAN A GRANTEE DETERMINE IF LEP PERSONS ARE UNDERSERVED?**

Conducting outreach to human service and other agencies that serve immigrant populations can be a good start. In addition, identifying the locations of the LEP communities and their travel patterns will provide you with information regarding whether the service provided is sufficient. Outreach to LEP communities during the planning process will give these communities the opportunity to express their views on the services available to them.

### **IF A GOVERNMENT AGENCY CONTRACTS WITH A PRIVATE OR OTHER ENTITY TO CONDUCT CERTAIN ACTIVITIES OF THE AGENCY, DOES THE EXECUTIVE ORDER APPLY TO THE ACTIVITIES OF THE CONTRACTOR?**

Yes. When a different entity conducts certain activities for the government agency, then the Executive Order applies to the entity's activities. The agency should ensure that the entity knows the general standards for LEP access and applies the agency's plan to the activities it is conducting on behalf of the agency. **An agency cannot avoid its obligations by contracting them out.** Mandatory compliance with the agency's LEP policy should be included in the contract.

### **WHAT ARE RESOURCES THAT MIGHT BE HELPFUL IN CREATING, MODIFYING, OR UPDATING A GOVERNMENT AGENCY'S LANGUAGE ACCESS IMPLEMENTATION PLAN, POLICY DIRECTIVES OR PROCEDURES?**

- View federal agency plans, DOJ guidance documents, and other resources at [www.lep.gov](http://www.lep.gov)
- Consult with the ADOT Civil Rights Office
- Consult with frontline staff, management, or others in your office to evaluate the language services needed
- Consult with internal divisions or regional offices to assess how they provide language services
- Consult with outside experts to assess how they provide language services
- Consult with the public, non-profit organizations and other community stakeholders
- Obtain help in constructing multilingual websites at <http://www.usa.gov/webcontent/multilingual/index.shtml>

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### **WHAT IS THE FOUR-FACTOR ANALYSIS?**

Recipients are required to take reasonable steps to ensure meaningful access to LEP persons. This "reasonableness" standard is intended to be flexible and fact-dependent. It is also intended to balance the need to ensure meaningful access by LEP persons to critical services while not imposing undue financial burdens on small businesses, small local governments, or small nonprofit organizations. As a starting point, a recipient may conduct an individualized assessment that balances the following four factors:

- The number or proportion of LEP persons served or encountered in the eligible service population ("served or encountered" includes those persons who would be served or encountered by the recipient if the persons received adequate education and outreach and the recipient provided sufficient language services);
- The frequency with which LEP persons come into contact with the program;
- The nature and importance of the program, activity, or service provided by the program; and
- The resources available and costs to the recipient.

### **SOURCES:**

<https://www.lep.gov/>

[https://www.fhwa.dot.gov/environment/environmental\\_justice/publications/reference\\_guide\\_2015/](https://www.fhwa.dot.gov/environment/environmental_justice/publications/reference_guide_2015/)